

UNITED STATES DISTRICT COURT

for the
District of New MexicoFILED
At Albuquerque NM

APR 16 2018

MATTHEW J. DYKMAN
CLERKIn the Matter of the Search of
(Briefly describe the property to be searched
or identify the person by name and address)ABRAN APODACA
Year of Birth: 1980
SSAN: 7983

Case No. 18-mr-318

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property (identify the person or describe the property to be searched and give its location):

Abran Apodaca, Year of Birth: 1980, SSAN: 7983, currently in custody at the Sandoval County Detention Center located in the _____ District of _____ New Mexico _____, there is now concealed (identify the person or describe the property to be seized):

Buccal swabs to be taken from the cheek and mouth, which contain biological identifiers in the form of DNA (Deoxyribonucleic Acid)

The basis for the search under Fed. R. Crim. P. 41(c) is (check one or more):

- ☒ evidence of a crime;
☐ contraband, fruits of crime, or other items illegally possessed;
☐ property designed for use, intended for use, or used in committing a crime;
☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Section
18 U.S.C. § 922(g)(1)
18 U.S.C. § 924(c)
18 U.S.C. § 111(a)(1)(2)

Offense Description
Possession of a firearm by a convicted felon
Possessing a firearm in the furtherance of a crime
Assaulting, resisting, or impeding certain officers or employees

The application is based on these facts:

See attached affidavit

- ☒ Continued on the attached sheet.
☐ Delayed notice of _____ days (give exact ending date if more than 30 days: _____) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.



Applicant's signature

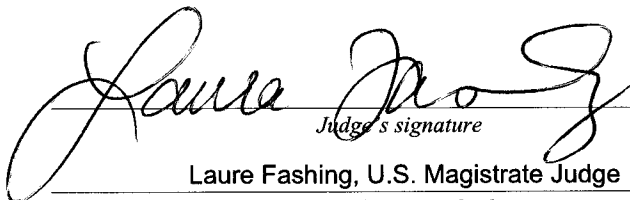
Rachel Erin Hickox, Special Agent

Printed name and title

Sworn to before me and signed in my presence.

Date: 04/16/2018

City and state: Albuquerque, NM



Judge's signature

Laure Fashing, U.S. Magistrate Judge

Printed name and title

AFFIDAVIT

Your Affiant, Rachael Hickox, having been duly sworn, does hereby depose and say:

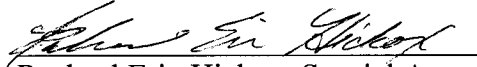
Introduction

1. I have been a Special Agent of the Federal Bureau of Investigation ("FBI"), United States Department of Justice, since October 2012. As such, I am a "federal law enforcement officer" within the meaning of Federal Rule of Criminal Procedure 41(a)(2)(C), that is, a government agent engaged in enforcing the criminal laws and duly authorized by the Attorney General to request arrest and search warrants. I am currently assigned to the FBI's Albuquerque Violent Crime Program in which I am authorized to investigate crimes against federal officers.
2. On or about August 22, 2017, the Grand Jury sitting in the United States District Court for the District of New Mexico returned an Indictment charging Abran Apodaca with assaulting, resisting, and impeding a federal officer in Count 1, using, carrying, and brandishing a firearm during and in relation to a crime of violence, and possessing a firearm in furtherance of such crime in Count 2, and felon in possession of firearm and ammunition in Count 3, all occurring on or about August 4, 2017 in Bernalillo County, District of New Mexico.
3. This affidavit is submitted in support of the issuance of a warrant authorizing the search of the body of Apodaca and the location and seizure of a DNA sample from Apodaca in order to compare that sample to a DNA sample collected from the Ruger .223 AR-556 ("Ruger") recovered from the scene of the Defendant's arrest for the current charges on August 4, 2017. For the reasons detailed below, there is probable cause to believe that, from buccal swabs that may be collected from the defendant, there exists evidence relating to the defendant's commission of federal offenses, to include but not limited to, the charged violations of 18 U.S.C § 111(a)(1) and (2), 18 U.S.C. § 924(c), and 18 U.S.C. § 922(g)(1). Your affiant proposes to take the samples sought herein in an entirely non-intrusive manner: buccal swabs from the inside of the defendant's mouth.
4. The information set forth in this affidavit was derived from my own investigation and/or communicated to me by other sworn law enforcement officers and/or witnesses. Because this affidavit is submitted for the limited purpose of securing a search warrant, your Affiant has not included each and every fact known concerning this investigation. Your Affiant has set forth only those facts that she believes are necessary to establish that probable cause to support a search warrant.

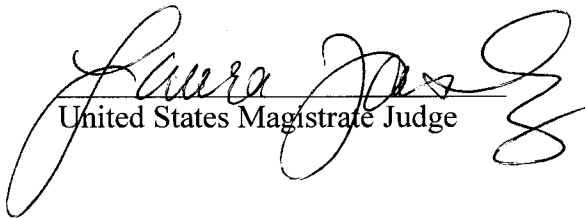
Details of Investigation

5. On or about August 4, 2017, investigators determined that Abran Apodaca had an active arrest warrant issued by a Court of the State of New Mexico for a probation violation relating to a 2008 felony conviction for armed robbery in violation of New Mexico Statutes Annotated § 30-16-02. On that date, agents and task force officers (“TFOs”) with the FBI conducted surveillance at 5910 Lucca Avenue Southwest, Albuquerque, New Mexico, which was the location of Apodaca’s primary residence on file with the New Mexico Office of Probation and Parole (“Apodaca’s Residence”).
6. During that surveillance, agents observed Apodaca park a gray Honda with New Mexico license plate PGT069 at Apodaca’s Residence. Agents observed Apodaca and two female passengers enter Apodaca’s Residence, then later exit the residence and re-enter the gray Honda.
7. Agents and TFOs engaged the emergency lights on their vehicles and approached Apodaca to arrest him. In response, Apodaca attempted to evade an oncoming FBI SUV. After that FBI SUV collided with Apodaca’s vehicle, Apodaca maneuvered around to the driver’s side of the FBI SUV. From the driver-side window of the FBI SUV, an agent observed an AR-15 type weapon on Apodaca’s lap, and saw Apodaca grab that AR-15 type weapon and point it at the agent. In response, the agent grabbed his own rifle and fired at Apodaca as the gray Honda passed the FBI SUV. One other agent and a TFO also fired at Apodaca.
8. The gray Honda continued around the corner and out of sight of agents. Agents followed, and upon turning the corner saw that the gray Honda had stopped, the two women passengers were out of the vehicle, and Apodaca was crawling out of the passenger-side door in the direction of an AR-15 type weapon laying on the ground near the gray Honda. Agents took Apodaca into custody, then began to render first aid to Apodaca who was bleeding from his shoulder and arm. In the process of rendering aid, the agent who was driving the FBI SUV got blood on his gloves and rifle. Blood was also visible inside the gray Honda, which was later searched.
9. The FBI’s Evidence Response Team (“ERT”) recovered the AR-15 type rifle that was on the scene. It was identified as a Ruger .223 AR-556, serial number 850-93063 (“Ruger”) with an attached scope.
10. On August 10, 2017, the Ruger was submitted for examination at the FBI Laboratory in Quantico, Virginia.
11. On January 3, 2018, the FBI Laboratory provided a report stating that a sample of blood was taken from the right side of the stock, as well as a sample from an unstained area on the grips of the weapon. Lab analysis indicated that both samples originated from a single male individual and were determined to be suitable for comparison purposes.

12. The Agents and TFOs are officers or employees of the United States as defined in Title 18 U.S.C. §1114, and were engaged in the performance of their official duties.
13. On or about June 13, 2007, Apodaca pleaded guilty to and was convicted of the felony offenses of two counts of armed robbery and conspiracy thereto in New Mexico State cause number D-202-CR-2006-03689.
14. Based on all of the above information, your Affiant submits there is probable cause to believe that from buccal swabs that may be collected from the defendant, there exists evidence relating to the defendant's commission of federal offenses
15. This affidavit has been reviewed by Assistant United States Attorney Alexander M. M. Uballez.
16. I swear that this information is true and correct to the best of my knowledge.


Rachael Erin Hickox, Special Agent - FBI

SUBSCRIBED and SWORN to before
me this 16th day of April, 2018.


United States Magistrate Judge